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Federal Register
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Thursday, February 22, 1990

Presidential Documents

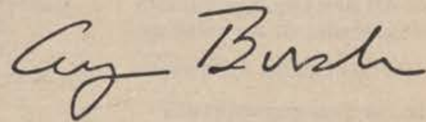
Title 3—

The President

Executive Order 12702 of February 20, 1990

Waiver Under the Trade Act of 1974 With Respect to Czechoslovakia

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974 (19 U.S.C. 2432(c)), which continues to apply to Czechoslovakia pursuant to section 402(d), and having made the report to the Congress required by section 402(c)(2), I hereby waive the application of subsections (a) and (b) of section 402 of said Act with respect to Czechoslovakia.



THE WHITE HOUSE,
February 20, 1990.

[FR Doc. 90-4234
Filed 2-20-90; 4:47 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 55, No. 36
Thursday, February 22, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, and 275

[Amdt. No. 320]

Food Stamp Program; Administration/ Management

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends Food Stamp Program regulations to implement certain provisions of Pub. L. 99–198, the Food Security Act of 1985, enacted on December 23, 1985. The provisions to be implemented are: periodic review of the hours that food stamp offices are open; establishment and operation of fraud detection units in project areas with 5,000 or more participating households; use of other means of collecting fraud claims unless those means are not cost effective; the collection of fraud claims from unemployment compensation benefits; use of Quality Control data to identify project areas where excessive error rates impair program integrity; and distribution of Expanded Food and Nutrition Education Program information and materials to food stamp recipients.

In addition to these statutory provisions, this action requires that State agencies identify at certification any household that owes outstanding payments on a previously issued claim determination. Additionally, the action modifies certain requirements about notices of fair hearings.

DATES: This publication finalizes with the modifications noted, the rule proposed on March 9, 1987, at 52 FR 7158. The reader is referred to the proposed rule for a complete understanding of today's publication.

(i) The provisions of this rule are effective April 2, 1990.

(ii) The provisions relating to the Expanded Food and Nutrition Education Program (§ 272.5(b)(1)(iv)), the collection of fraud claims (§ 273.18), the monitoring of claims against households (§ 273.18(k)(5)), adverse action notice on claim demand letters (§ 273.18(d)(3)), notices of fair hearings (§ 273.18(d)(3)), and the results of geographic error prone profiles (§ 275.15(g)) shall be implemented no later than July 2, 1990. The provision relating to fraud detection units (§ 272.4(h)) shall be implemented no later than September 4, 1990. State agencies shall complete the first review of food stamp office hours (§ 272.4(g)) during Federal Fiscal Year 1990.

(iii) State agencies may submit attachments to their Plans of Operation pertaining to the intercept of unemployent compensation benefits to repay international Program violations claims as specified in § 272.2 (a) and (d) and § 272.12(a) of this amendment as of February 22, 1990.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Abigail C. Nichols, Director, Program Accountability Division, Food Stamp Program, Food and Nutrition Service (FNS) USDA, 3101 Park Center Drive, Alexandria, Virginia 22302 or by telephone at (703) 756–3414.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The rule will affect the economy by less than $100 million a year. The action will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified this action as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice to 7 CFR part 3015, subpart V (Cite 48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). George A. Braley, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The changes will affect food stamp recipients and the State and local agencies which administer the program.

Paperwork Reduction Act

The reporting and recordkeeping burden associated with the Notice of Adverse Action and the demand letter of recipient claims is approved by the Office of Management and Budget (OMB) under OMB control number 0584–0064.

The remaining provisions of this rule do not contain any reporting and/or recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The preamble of the proposed rule, published in the Federal Register on March 9, 1987, indicates that there are reporting and recordkeeping requirements at § 272.4(f). This is an error. Section 272.4(f) is not affected by this rule.

Background

1. Hours of Operation

The publication of March 9, 1987, pursuant to section 16(b)(1) of the Food Stamp Act as amended by section 1524 of Pub. L. 99–198, proposed that State agencies review the adequacy of the hours of operation of food stamp offices periodically to ensure that potential recipients and recipients who work have access to the Food Stamp Program. Access also includes issuance services operated at those offices. The Department received comments from eight state welfare agencies on this proposal. One-half of the commenters stated that states were already providing full service to potential recipients and recipients who work. Two State agencies stated that the

frequency of reviews should be governed by the Management Evaluation (ME) review schedule prescribed in 7 CFR 275.20. The Department has not changed its proposal. However, State agencies may, at their option, review the adequacy of the hours of operation of food stamp offices at the same time ME reviews are conducted when feasible, but not less frequently then once annually. As stated in the proposed rule, the State-level offices would retain all information collected from local offices for use in assessing whether or not the program is accessible in all project areas. Collected information would be available for review should the need for a review arise. (7 CFR 272.4(g))

2. Fraud Detection Units

Section 11(e) of the Food Stamp Act as amended by section 1526 of Pub. L. 99–198 requires that fraud detection units be established and operated in project areas in which 5,000 or more households participate in the Food Stamp Program. It is not a requirement that a dedicated or separate office be established for this purpose and that such an office be physically located within each 5,000 household "catchment area", but rather that some personnel in all project areas be available to or responsible to detect, and investigate fraud and assist in the prosecution of program fraud. A State agency with an internal procedure whereby suspected fraud cases and referred to fraud investigators whether these are located within the State agency or at an appropriate law enforcement agency meets the "detection" requirement. Most of the commenters stated that affected project areas are already in compliance with the provision.

Two State agencies requested that FNS clarify which activities are eligible for reimbursement at 75 percent funding. Current food stamp regulations at 7 CFR 277.15(e) set the standards for the receipt of funds at the 75 percent level for investigative functions. Those same standards apply to fraud detection units. As per those standards, fraud "detection" activities when performed by individuals whose official job title is "Investigator" are eligible for 75 percent funding. "Detection" activities performed by individuals whose official job title is not "Investigator" may meet the requirements of this section but would only be eligible for 50 percent funding. (7 CFR 272.4(h))

3. Expanded Food and Nutrition Education Program

Section 11(f) of the Food Stamp Act, as amended by section 1530 of Pub. L. 99–198, requires State agencies, when requested, to allow Expanded Food and Nutrition Education Program personnel and information materials to be placed in food stamp offices wherever practicable. The Department received very few comments on the proposed provision. The majority of the comments received were from State welfare agencies which generally supported the provision as proposed. Therefore, the proposal has been adopted without change in this final rule. (7 CFR 272.5)

4. Intercept of Unemployment Compensation (UC) Benefits

Twenty-two comments were received on the provision which proposed interception of unemployment compensation benefits. Three commenters opposed the rule in general; six supported it. The other commenters focused only on specific portions of the proposed rule.

The paragraph numbers below correspond to the paragraphs in § 272.9 of the proposed rule. In the proposed rule, the section was numbered § 272.9. In the final rule this paragraph is numbered § 272.12 because subsequent additions have been incorporated since publication of the proposed rule.

a. General. This section proposed to authorize State agencies to use the UC intercept for intentional Program violations (IPV) claims provided they had an FNS-approved attachment to their Plan of Operation and used the procedures described therein. It is important to note that this provision does not automatically require State agencies to change their Plan of Operation, nor does it mandate that State agencies use the intercept procedure. The decision whether to use the procedure at all is entirely up to the State agency. The decision to use the intercept procedure is likewise voluntary on the part of each individual household.

Four commenters objected that the proposed rule would be too costly, and one recommended that a pilot project be conducted to determine cost effectiveness. Since the rule is optional, State agencies can use cost as a factor in determining whether or not they wish to implement it. Consequently, the Department does not plan to conduct or sponsor pilots or other tests of the intercept procedures.

One commenter recommended that the optional status of the rule be clarified, and one requested that the optional status be retained. Another commenter objected that the intercept was optional and requested that the intercept be required. Since the legislation provides only for optional implementation, the Department has no authority to require State agencies to use the intercept, and the final rule makes this clear.

One commenter recommended that the intercept be applied to inadvertent household errors. The legislation establishing the authority for the intercept (Section 1535 of the Food Security Act of 1986, 99 Stat. 1583) applies that authority only to uncollected overissuances as determined under subsection (b)(1) of Section 13 of the Food Stamp Act of 1977, as amended, i.e., claims arising from IPVs. Consequently, the rule retains the limited application of the intercept to IPV claims.

The final rule deletes the language in the proposed rule which would have specified that State agencies with approved intercept procedures use these procedures. This language is unnecessary since the intercept procedures are a part of the FNS-approved State Plan of Operation which State agencies agree to implement when they sign the Federal/State Agreement.

b. Identification of households subject to the intercept

The proposed rule would have required State agencies to identify households subject to the UC intercept by: (1) Identifying household members who owe IPV claims; (2) referring such individuals to UC agencies, unless they are referred under the income and eligibility verification system (IEVS); and (3) requesting that the UC agency provide certain information about such individuals in their files. The requirements of item (2) above have been reduced in the final rule language in an attempt to simplify procedures.

One commenter expressed the opinion that there would be a problem intercepting an individual's UC benefits to repay another household's IPV claim. Food Stamp rules at 7 CFR 273.18(a) hold all adult household members jointly and severally liable for any overissuance of benefits to the household and hold liable any household which contains an adult member who was an adult member of another household that received an overissuance. Consequently, under these conditions, UC benefits can be intercepted from one individual in one household to repay another household's IPV claims. However, we believe the commenter has identified an area which could cause considerable administrative and/or legal confusion between State agencies and the UC agency. State agencies may wish to tailor their

policies to exclude these cases from referral to the UC agency.

One commenter recommended that the rules emphasize that only proven IPV claims are subject to the UC intercept. Although this comment is correct, it appears that the rule's language reflects this position. Under no circumstances may "pending" or "suspected" IPV claims be referred.

One commenter recommended limiting the intercept to households which are not participating in the Food Stamp Program. The Department disagrees that the rules should set this limit for all State agencies since the intercept may be a useful option for some participating households. The final rule does provide that State agencies may themselves choose to limit this intercept to nonparticipating households or to use the intercept for both types of households. The Department sees several advantages to this change. First, allowing State agencies to limit the intercept to nonparticipating households may encourage more State agencies to use the intercept. This approach will also avoid the problem of modifying all demand letters, a problem about which several State agencies objected as discussed further in section (c) below. Finally, State agencies which limit the intercept to nonparticipating households can still recoup from allotments of participating households to collect IPV claims from such households.

Another commenter requested that State agencies be allowed to select which IPV claims they intercept. The preamble to the proposed rule called for referral of all IPV claims to the UC agency on the grounds that it probably would be cost beneficial to refer even a small claim. Since the use of the UC intercept is optional, the Department believes that State agencies should be able to select which claims they refer for possible intercept, and the final rule is changed accordingly.

FNS wants to know which State agencies are selecting IPV's for referral to UC agencies and whether they are intercepting UC benefits of participating or nonparticipating households, or both. Consequently, as mentioned above, the final rule requires that State agencies which decide to use the intercept must provide this information.

c. Notices to households

The proposed rule required that State agencies provide participating and nonparticipating households which are subjected to the UC intercept with certain notices about the intercept. The proposed rule also provided for an informational notice about the intercept from UC agencies to claimants for UC.

One commenter objected to adding the notice to participating households, to the demand letters because of the small number of claims referred for intercept. Another commenter objected to the notice because it would add a second page to the demand letter. A third commenter wanted the notice to stress the voluntary aspect of the intercept for households. The final rule clarifies that the notice about the intercept must go *with* the demand letter, so State agencies can use a separate document if they wish to. A phrase is added to clarify that the notice informs the household that repaying by way of the intercept is an available option. As discussed above, the final rule is also modified to reflect the options which State agencies have with respect to types of households and to types of IPV claims subject to intercept.

One commenter recommended that the intercept be mandatory. Three commenters expressed doubt about the usefulness of voluntary compliance in general and one expressed the same doubt with respect to nonparticipating households in particular. Since the legislation specifically provides for the intercept of UC benefits based on a voluntary agreement between the State agency and the individual owing the IPV claim, the final rule retains provision only for voluntary use of the intercept.

Another commenter recommended that, in order to keep costs down, the intercept be used after other collection methods fail. Intercept is a voluntary procedure for State agencies and FNS believes that State agencies are in the best position to determine whether the intercept is useful for them.

Two other commenters directly addressed nonparticipating households. The first commenter objected to referring all nonparticipating households for intercept because of cost. As already discussed, the final rule provides for State agency selection of IPV claims for referral based on cost considerations. The second commenter expressed belief that a notice about the intercept, which includes notice about judicial action, would mislead households into fearing that prosecution would be pursued if they do not reach a voluntary agreement. The final rules clarify that the judicial processes about which the notice would advise the household are those discussed in section 7 CFR 272.12(f). They are actions such as a writ or summons. While prosecution is not involved, such notice is intended to communicate a State agency's intention to take judicial action, and is appropriate and necessary if the State agency plans to take such action.

With respect to notices from UC agencies, one commenter recommended that no intercept be initiated except by the FSP State agency. The rules as proposed have this effect. The proposed rules limited the UC notice to an informative item that there is an intercept option available and directions about how to contact the Food Stamp Program State agency. The final rules are not changed in this regard.

d. Agreements with individuals

The proposed rules provided for intercepts of UC benefits based on agreements between State agencies and individuals. The proposed rule also required State agencies to provide UC agencies copies of agreements with individuals, and would have required that the agreement include certain items.

One commenter recommended that the agreement be incorporated into the application in order to expedite deductions. Another commenter suggested either a standard agreement be used with individuals owing IPV claims which would identify UC benefits, tax refunds and other sources which the State agency may tap to recover claims, or that a specified percentage of the allotment be identified in the application as the level for such recovery actions. Incorporating the agreement into the application would unnecessarily lengthen that form and the process for completing it since relatively few households are potentially subject to the intercept. Establishing a fixed percentage for the deduction would prevent agreements from taking account of a particular household's circumstances and amounts of claims as the proposed rule would have required. Consequently, the final rule continues to limit the agreements with individuals to those negotiated on a case-by-case basis. Elsewhere in this rule there is provision for State agencies to collect IPV claims through "other means." These could include tax refunds and other sources, depending on State laws. This final rule adds to 7 CFR 273.18(d)(3) a requirement that, if a State agency is required to use such other means of collecting IPV claims, it must include in its demand letter a notice about what other means it may use and in what circumstances it may use them.

One commenter recommended that the agreement show the State agency's calculations of the deduction amount. The rule does not make this change. The amount of the deduction is agreed to by the individual and State agency. The agreement shows that amount, how much will be deducted each week and

for how many weeks the deduction will run.

One commenter asked that the rules clarify what is meant by "insufficient UC benefits." The phrase means that there are not enough UC benefits for part or any of the deduction to be made. As discussed in the preamble to the proposed rules, "insufficient UC benefits" might result from such events as changes in income or the initiation of child support offsets. When taken in the context of 7 CFR 272.12(d)(4)(ii) the Department believes that the rule language is clear as it appears in the proposed rule, and so no change is made in the final rule.

Finally, one commenter objected to the requirement that State agencies provide UC agencies a copy of the agreement. This is a legislated requirement, and so the final rule is not changed.

e. Amounts of deductions

The proposed rule required that the amount of the weekly deduction from UC benefits be agreed to by the individual and the State agency, subject to the minimum level which current rules require be repaid through allotment reduction. The proposed rule specified that the amount of the deduction must be considered income and specified the factors to be considered in determining the amount of the deduction.

Two commenters recommended that the rules set maximum amounts that can be deducted, such as the amounts specified for allotment reduction. The proposed rule established controls to assure that State agencies do not set excessive levels for deductions. The Department believes those controls are adequate. Under a voluntary agreement, the amount of the deduction is subject to negotiation and agreement by the State agency and the individual. If an agreement is not reached for participating households, recoupment of the allotment is available at the level established in current rules, which is the greater of 20 percent of the monthly entitlement or $10 per month. If an agreement cannot be reached with nonparticipating household, a court action is available. The State agency is required to determine the amount which it recommends to the court by using as many of the factors specified at 7 CFR 272.12(e) as the State agency knows about.

One commenter expressed concern that there would be problems keeping the deduction from becoming less than the minimum allotment reduction because of changes in household circumstances. This may occur, and the proposed rule provided for this possibility by specifying that agreements with individuals make them responsible for notifying State agencies about changes in household circumstances. This provision is retained in the final rule which at 7 CFR 272.12(d)(4)(ii) also clarifies that the amount of a weekly deduction in an agreement is a maximum which may be decreased if there are insufficient UC benefits.

One commenter recommended that steps be taken to protect households from reduced food stamp benefits, and another expressed concern that counting deducted UC benefits as income will require additional information from the UC agency. The rule is not changed because of these comments. Since the amounts deducted from UC benefits count as income, the deduction will not affect benefits. Even if the amount of UC benefits for participating households changes, the intercept procedures require no more information from the UC agency than is required now.

f. Court-ordered intercepts

The proposed rule authorized State agencies to recover IPV claims from nonparticipating households by judicial intervention either after failing to reach a voluntary agreement or without attempting to reach an agreement. The proposed rules would also have required certain actions with respect to determining amounts of deductions and communicating with the court and individuals involved.

Two commenters expressed concern that obtaining a court action will take too long relative to the usual duration of UC benefits, and one argued that costs would be higher than benefits. The legislation requires that the option be provided, so the final rule retains it. The Department understands that the time needed to obtain court actions can deter administrative action and encourages State agencies which otherwise want to use UC intercept to explore with the appropriate judicial agencies ways to expedite requests for garnishments and similar actions. The provision allowing State agencies to select cost-beneficial IPV claims to refer for interception of UC benefits should assure that costs do not exceed benefits.

g. Agreement with UC agencies.

The proposed rule required Food Stamp Program State agencies using the intercept to execute an agreement with the UC agency and required that certain elements be in the agreement with respect to: (1) Communication between the two agencies; (2) cost; and (3) transmittals from the UC agency to the Food Stamp Program State agency of the amounts deducted.

Three commenters objected to the rule because of cost and/or the negative impact on UC agency operations and image. The Department understands that the primary mission of UC agencies is the administration of Unemployment Insurance Benefits (UIB) and similar programs. The legislation does not mandate the intercept of UC benefits to collect IPV claims, while it does require that FSP State agencies reimburse UC agencies for costs attributable to that activity. Since agreements between the two program agencies are subject to negotiation to mutual satisfaction, the Department believes there is adequate allowance for both parties to arrange for effective intercept without an adverse impact on UC agency operations or image.

Two commenters complained that the procedures will involve complicated communications between UC agencies and Food Stamp Program State agencies, and one commenter recommended that the rules set a minimum frequency for communications in order to avoid errors. The final rule is unchanged from its proposed form in this area. The Department believes that the amount of communications which the proposed rules required are the minimum amount which can be reasonably expected to effect the intercept. Since circumstances will vary State to State, setting minimum frequencies for all State agencies to meet could prevent some State agencies from implementing the intercept. The Department believes that State agencies can establish communication procedures which assure adequate transmittals of amounts deducted and reports from UC agencies.

5. Claim Demand Letters and Fair Hearings

The proposed rule required that State agencies provide a notice of adverse action with the demand letter for a claim if a household has not had a fair hearing on the claim. The proposed rule also required that where the amount of a claim is not established as part of a fair hearing, the demand letter notify the household that it may request and obtain a fair hearing on the amount of the claim. These requirements were proposed to clarify current rules and to assure that due process is provided. A notice of adverse action must also be sent on any claim which is already established at the time this provision becomes effective if a follow-up demand letter is ever sent on that claim in the future. Therefore any claims which have

already had the required number of demand letters sent will not be subject to this provision (unless the State agency chooses to continue sending more demand letters). For all new claims established, or on all demand letters sent out on existing claims after the effective date of this provision, State agencies shall send adverse action notices giving individuals 90 days from the date of this demand letter to request a fair hearing if they wish to contest the amount of the claim. This is based on current fair hearing procedures where individuals have a right to appeal any proposed action for a period not to exceed 90 days. Under the above procedures agencies may meet their requirements by providing the notice of the right to appeal the amount of the claim by the sending of only one adverse action notice for each claim case, even though follow-up demand letters are later sent. This adverse action notice may be either attached to or incorporated into the demand letter itself.

One commenter objected to sending a notice of adverse action with each demand letter, and four commenters stated that it was unclear whether or not a separate notice was required. The final rule is modified to show that the notice can either be incorporated into the demand letter or accompany it.

One commenter expressed puzzlement about why the court in *Escamilla* v. *Nebraska Department of Social Services*, CIVIL No. 84-L-770, would require a notice of adverse action be sent at the time of a demand letter. The court found that current rules do not adequately protect due process rights because a demand letter issued on a claim which had not been established in a fair hearing could result in the involuntary reduction of benefits, an adverse action. This rule will protect households' due process right in these situations.

Another commenter requested that the rule codify the findings in *Escamilla*. Since regulations provide guidelines for program operations, we have not added the court findings to the language of the rule itself. We discussed the court's concerns in the preamble to the proposed rule and in the paragraph above.

One commenter expressed concern that the notice would confuse households whose claims are not subject to recoupment. (These are claims due to administrative errors.) While these claims are not subject to formal recoupment procedures as specified in § 273.18 (g)(3), they can be used to offset any restored benefits which might become due to the households through offset, a form of "internal" recoupment. Consequently, these households should be given the opportunity to request a fair hearing if they disagree with the State agency's findings.

With respect to requiring that notice of the right to a fair hearing on the amount of the claims be provided when the amount is not established in fair hearing, a commenter recommended that this requirement not apply to IPV claims since the rules for disqualification cover such actions. Rules require that individuals disqualified for IPVs be provided demand letters, the contents of which are specified in the rules at 7 CFR 273.18(d)(3). It would be unusual if the amount of an IPV claim is not established in a disqualification hearing or comparable action. Nonetheless, in such circumstances individuals are entitled to fair hearings on the amount of the claims, and so the final rule does not exempt IPV claim demand letters from properly notifying those individuals.

The proposed rule also reorganized and edited paragraph (d)(3). Those revisions are made final in this rule. (7 CFR 273.18(d)(3))

6. Collection of Fraud Claims

Section 13(b)(1)(B) of the Food Stamp Act as amended by section 1534 of Pub. L. 99-198 mandates that State agencies use some other means of collection (e.g. collection agents or UC intercept) to recover IPV claims from any household which fails to respond to a demand letter if such claims can not be collected through direct payments or allotment reductions, unless the State agency can demonstrate that it would not be cost effective to do so. Two State agencies expressed concern that turning a food stamp claim over to a collection agent might be a violation of confidentiality and requested clarification on the types of information that can be released to collection agents. Information released to collection agents shall include the full name of all household members, last known address, amount of the claim and the date of the last payment. Under no circumstances should State agencies release entire casefiles to collection agents.

Two commenters expressed support for the proposal only if in determining whether alternate collection actions are cost effective, consideration is given to whether no not it is cost effective for the State agency. The Department believes that it is the intent of Congress that the methods of collecting claims should be cost effective for each individual State agency.

7. Monitoring Claims Against Households

The proposed rule required State agencies to identify at certification any household that owes outstanding payments on a previously issued claim determination and take appropriate action against such households. Although most states already have systems in place to identify and take this action, the provision specifying this as a State responsibility was proposed as a result of a March 1986 Report to the Congress from the United States General Accounting Office, "Benefit Overpayments, Recoveries Could Be Increased in the Food Stamp and AFDC Programs," which pointed out that some State agencies are not effectively identifying households at certification which have outstanding claims.

Two commenters supported the provision as written. One State agency stated that it already identifies households with outstanding claims on a quarterly basis and another identifies households with outstanding claims within 30 days of certification. One State agency recommended that the proposed provision be changed to allow State agencies the flexibility of using cost effective methods of indentifying households with outstanding claims at certification.

As pointed out in the preamble to the proposed rule, the Department did not prescribe any particular method to implement the requirement so as to allow State agencies the flexibility to develop systems appropriate to their capabilities and ensured identification of households with outstanding claims at certification. State agencies may do so by flagging manual systems or programming automated certification and issuance information systems to intercept households with outstanding claims at any point. State agencies should also bear in mind that 7 CFR 273.17(d)(4) prohibits recoupment through reduction of an initial allotment, including a retroactive initial allotment. This provision is reiterated in the final rule for purposes of administrative clarification; i.e., to permit persons responsible for designing the accounting or computer reporting systems ready access to all pertinent requirements of such systems. The Department has retained the provision as proposed. (7 CFR 273.18(k)).

8. Geographical Error-Prone Profiles

Thirteen State agencies commented on the proposed geographical error-prone profile provisions. This provision permits FNS to identify project areas

within States that impair the integrity of the program and to require State agencies to correct such damage. Eight State agencies stated that geographical error-prone profile (GEPPS) analysis was not an efficent management policy, largely because the Federal Government is not in a suitable position to bypass the State level and prescribe solutions at the local level. FNS does not intend to prescribe solutions except where a State agency has failed to implement a corrective action.

Six State agencies questioned the statistical validity of performing below-State level error indentification and implementing corrective action on the basis of such identification. FNS is aware of these limitations and did allude to them in its first report to Congress, Food Stamp Program, Review of Payment Error Rates in selected Local Areas, on this provision. To partially address these limitations, FNS, in its first experimental identification of high error localities, selected only sites that were determined to have error rates greater than 5 percent by using a statistical test of significance with a confidence level of 97.5 percent. To determine if significant, a normal test was used. Accepted statistical theory says that 30 cases will yield a normal approximation when using a ratio estimate.

Three State agencies suggested that FNS provide increased funding for GEPPS. This suggestion was not accepted since FNS has no legal authority to do so. In addition, FNS views the GEPPS activity as being essentially the same as all other Performance Reporting System activities (which are funded only at the 50 percent reimbursement level). One State agency recommended that local Corrective Action Plans (CAPs) focus only on worker-caused error. FNS did not accept this recommendation since State agency actions can affect recipient error as well as worker error.

One State agency made a suggestion that we make it clear that no corrective action need be taken by a locality identified by FNS as "high error" if the State had already made such a determination and implemented an effective CAP. We accepted this suggestion. (7 CFR 275.15(g))

9. Implementation

(i) The provisions of this rule are effective April 2, 1990.

(ii) The provisions relating to the Expanded Food and Nutrition Education Program (§ 272.5(b)(1)(iv)), the collection of fraud claims § 273.18, the monitoring of claims against households (§ 273.18(k)(5)), adverse action notice on claim demand letters (§ 273.18(d)(3)), notices of fair hearings (§ 273.18(d)(3)), and the results of geographic error prone profiles (§ 275.15(g)) shall be implemented no later than July 2, 1990. The provision relating to fraud, detection units (§ 272.4(h)) shall be implemented no later than September 4, 1990. State agencies shall complete the first review of food stamp office hours (§ 272.14(g)) during Federal Fiscal Year 1990.

(iii) State agencies may submit attachments to their Plans of Operation pertaining to the intercept of unemployment compensation benefits to repay intentional Program violations claims as specified in § 272.2(a) and (d) and § 272.12(a) of this amendment as of February 22, 1990.

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food stamps, Grant programs-social programs, Reports and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 275

Administrative practice and procedures, Food stamps, Reporting and recordkeeping requirements.

Therefore, 7 CFR Parts 272, 273 and 275 are amended as follows:

The authority citation for parts 272, 273 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(113) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(113) *Amendment (320).*

(i) The provisions of this rule are effective April 2, 1990.

(ii) The provisions relating to the Expanded Food and Nutrition Education Program (§ 272.5(b)(1)(iv)), the collection of fraud claims § 273.18, the monitoring of claims against households (§ 273.18(k)(5)), adverse action notice on claim demand letters (§ 273.18(d)(3)), notices of fair hearings (§ 273.18(d)(3)), and the results of geographic error prone profiles (§ 275.15(g)) shall be implemented no later than July 2, 1990. The provision relating to fraud detection units (§ 272.4(h)) shall be implemented no later than September 4, 1990. State agencies shall complete the first review of food stamp office hours (§ 272.4(g)) during Federal Fiscal Year 1990.

(iii) State agencies may submit attachments to their Plans of Operation pertaining to the intercept of unemployment compensation benefits to repay intentional Program violations claims as specified in § 272.2 (a) and (d) and § 272.12(a) of this amendment as of February 22, 1990.

3. In § 272.2 the seventh sentence of paragraph (a)(2) is amended by adding the phrase "the optional plan for intercepting Unemployment Compensation (UC) benefits for collecting claims for intentional Program violations", after the phrase "the optional plan for Program informational activities directed to low-income households,", and a new paragraphs (d)(1)(x) is added. The addition reads as follows:

§ 272.2 Plan of operation.

* * * * *

(d) *Planning documents.*

(1) * * *

(x) A plan for intercepting UC benefits for collecting claims for intentional program violations as specified in § 272.12 if the State agency elects to use that procedure.

* * * * *

4. In § 272.4, new paragraphs (g) and (h) are added to read as follows:

§ 272.4 Program administration and personnel requirements.

* * * * *

(g) *Hours of operation.* State agencies shall be responsible for determining the hours that food stamp offices shall be open. At least once annually, State agencies shall review the hours of operation of food stamp offices to ensure that the needs of recipients who work, including issuance services operated at these offices, are adequately met. Based on the results of the reviews, State agencies may find it necessary to change the hours that food stamp offices are open to meet the needs of such recipients. The results of these reviews shall be retained at the State level for review by FNS.

(h) *Fraud detection units.* State agencies shall establish and operate fraud detection units in all project areas in which 5,000 or more households participate in the Program. The fraud detection unit shall be responsible for detecting, investigating and assisting in the prosecution of Program fraud and need not be physically located in each

5,000 household "catchment area". The workers fulfilling this function need not work full-time in fraud detection nor work exclusively on the Program. A written State agency procedure which systematically identifies and refers potential fraud cases to Investigators shall be considered a "detection" activity meeting the requirements of this section. The fraud detection function may be performed by persons not employed by the State agency.

5. In § 272.5, a new paragraph (b)(1)(iv) is added to read as follows:

§ 272.5 Program informational activities

* * * * *

(b) *Minimum requirements.* * * *

(1) * * *

(iv) State agencies shall encourage program participants to participate in the Expanded Food and Nutrition Education Program (EFNEP) and, wherever practicable, allow EFNEP personnel to come into food stamp offices to distribute informational materials and speak with food stamp recipients.

* * * * *

6. A new § 272.12, is added to read as follows:

§ 272.12 Intercept of unemployment compensation benefits.

(a) *General.* State agencies may, at their option, arrange for the intercept of unemployment compensation (UC) benefits to collect claims for intentional Program violations as defined in § 273.16(c). State agencies may not conduct such intercepts unless they have an FNS-approved attachment to their Plan of Operation as required by § 272.2(d)(l)(x). Acceptance of the intercept of UC method of collection is voluntary with each affected household.

(b) *Identification of households subject to the intercept.* (1) State agencies which decide to use the intercept procedure shall, in the attachments to the Plan of Operations required by § 272.2(d)(1)(x), specify if they will use the intercept for nonparticipating households only or for both nonparticipating and participating households. They shall also specify the type of case subject to UC intercept or the selection criteria for referral of households for intercept.

(2) Upon request of the UC agency, State agencies may provide such agencies identifying casefile information about individuals subject to the intercept.

(3) State agencies shall request that the UC agency provide the State agency the following information from UC files about any such individuals:

(i) Whether the individual is receiving UC benefits;

(ii) The amount of any such benefits; and

(iii) The current (or most recent) home address of the individual.

(c) *Notice of intercept procedures.* (1) State agencies shall notify households subject to the intercept pursuant to paragraph (b) of this section as follows:

(i) State agencies shall notify participating households of the UC intercept procedures with the initial demand letter sent in accordance with § 273.18(d)(3). This letter shall explain to the households that it may use the intercept alone or in combination with other repayment methods, that use of the intercept is voluntary, and that the intercept is one of several repayment methods available to them;

(ii) State agencies shall notify nonparticipating households which have failed to repay claims for intentional program violation of the intercept method unless the judicial action specified in paragraph (f) of this section will be taken without attempting to reach a voluntary agreement. Notices to nonparticipating households shall include a copy of the agreement described in paragraph (d) of this section and directions for contacting the State agency. If the State agency plans to initiate judicial process as described in paragraph (f) of this section against a household which does not voluntarily agree to the intercept, the notice shall advise such households that judicial action shall be initiated unless the household contacts the State agency within 10 days of receipt of the notice.

(2) As part of the agreement with UC agencies described in paragraph (g) of this section, State agencies may arrange for UC agencies to provide UC claimants a notice of the intercept option with directions about how to contact the State agency for further information to be included on or with the application for UC benefits.

(d) *Agreements with individuals.* State agencies may arrange with households for deductions from UC benefits by executing agreements with individual household members who receive UC benefits. Copies of agreements with individuals shall be provided to UC agencies as provided in paragraph (g) of this section. The agreements shall include:

(1) The total amount to be deducted from UC benefits otherwise due;

(2) The amount of UC benefits to be deducted each week;

(3) The number of weeks the deduction will be made;

(4) A statement that:

(i) It is the individual's responsibility to notify the State agency if a change in the amount of the deduction is necessary, for example, because of a change of earnings or in other circumstances affecting income;

(ii) The amount of a weekly deduction is a maximum which may be decreased if there are insufficient UC benefits to allow the full deduction and the number of weeks for the deduction may be correspondingly increased to complete collection; and

(iii) The State agency will provide the individual a receipt for the total amount of deductions actually made;

(5) The signature of the individual agreeing to the deductions; and

(6) Either on the agreement or on a transmittal to the UC agency, a signature of a State agency official indicating concurrence with the agreement.

(e) *Amounts of deduction.* The amount of the weekly deduction shall be determined by agreement between the individual and State agency, provided that for participating households the amount, in combination with any other repayment methods, shall result in a scheduled repayment rate no less than that which would be repaid through the allotment reduction prescribed in § 273.18(g)(3). The determination of the amount shall take into account such factors as the total amount of the claim, the amount of weekly UC benefits and the number of weeks they are expected to be paid, other income available to the individual, and any other deductions from the individual's UC benefits, allowing priority to such mandatory deductions as those for child support payments required by the Social Security Act and recoveries of prior excess UC benefits.

(f) *Court-ordered deductions.* State agencies may attempt to recover claims for intentional program violations from nonparticipating households by obtaining a writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from unemployment compensation. Subject to State and local law, State agencies may seek such judicial action before or after attempting to reach a voluntary agreement as described in paragraph (d) of this section.

(1) The State agency shall determine an amount to be withheld each week by considering as many of the factors listed in paragraph (e) of this section as it has knowledge of and shall recommend such amount to the court. The State agency shall notify the court of any mandatory

deductions from an individual's UC benefits of which it has knowledge.

(2) The State agency shall assure that any individual against whom a court-ordered deduction is sought is notified of:

(i) The total amount to be deducted from UC benefits otherwise due;

(ii) The amount of UC benefits to be deducted each week; and

(iii) The number of weeks the deduction will be made.

(3) The State agency shall provide the UC agency the information specified in paragraph (f)(1) of this section and a copy of the court order or a summary as the UC agency may request.

(g) *Agreement with UC agencies.* State agencies using the procedures specified in this section shall execute written agreements with UC agencies, including UC agencies in other States when circumstances and experience indicate that would be useful. The agreements shall include:

(1) The requirements specified in this section which affect both agencies, including the identifying information the State agency will provide, the frequency of and the procedures for exchanging information;

(2) The particular costs, both initial and ongoing, which the State agency shall reimburse the UC agency. Such costs shall be limited to those attributable to the repayment of claims for intentional Program violations for which the State agency does not otherwise reimburse the UC agency; and

(3) The frequency of transmittals of deductions from UC benefits to the State agency and of reports of amounts deducted for each individual and the total amount transmitted.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.9 [Amended]

7. In § 273.9, paragraph (b)(2)(ii) is amended by adding the words "including any amounts deducted to repay claims for intentional program violations as provided in section 272.12", after the words "unemployment compensation".

§ 273.18 [Amended]

8. In § 273.18, paragraph (d)(3) is revised, paragraph (d)(4)(iii) is amended by revising the first sentence, paragraph (g)(3) is redesignated as paragraph (g)(4), and new paragraphs (g)(3) and (k)(5) are added. The revisions and additions read as follows.

§ 273.18 Claims against households.

* * * * *

(d) *Collecting claims against households.* * * *

(3) *Initiating collection on claims.* Each State agency shall develop a written demand letter for initiating collection action on claims which contains the information required by this paragraph. A model letter is available from FNS. If the amount of the claim was not established by a fair hearing, the State agency shall provide a notice of adverse action as part of or along with the demand letter, as specified in § 273.13. The notice of adverse action shall be sent on all claims established after March 26, 1990 and on any preexisting claims if at any time after the effective date of these provisions a follow-up demand letter is sent on that claim. A one-time adverse action notice accompanying the original demand letter, or incorporated into it, which informs recipients they have 90 days to appeal the amount of the claim, satisfies the notice provisions.

(i) The demand letter shall inform the household of the amount owed, the reason for the claim, the period of time the claim covers, any offset which reduces the claim and how the household may pay the claim. If the amount of the claim was not established at a fair hearing, including one consolidated with an administrative disqualification hearing, the latter shall notify the household that it may request a fair hearing on the amount of the claim.

(ii) The demand letter shall advise the household of the availability of any individual or organization which provides households free legal representation.

(iii) For inadvertent household error and intentional program violation claims, the demand letter shall inform the household of the length of time it has to decide which method of repayment it will choose and to inform the State agency of its decision, and the letter shall inform the household that its allotments shall be reduced if the household fails to agree to make restitution.

(iv) If the State agency has implemented the intercept of unemployment compensation benefits as provided in paragraph (g)(3) of this section, the demand letter shall inform the household of this voluntary method of repayment of claims for intentional program violations.

(v) If the State agency is required to use other means of collecting claims for intentional Program violations as specified in paragraph (d)(4)(iii) of this section, the letter shall inform the household of those other means and the circumstances in which they may be used by the State agency.

(vi) The demand letter shall inform the household of the availability of allotment reduction as a voluntary method of repayment of administrative error claims.

(vii) The demand letter shall inform a household against which the State agency has initiated collection action of its right to request renegotiation of any repayment schedule to which the household has agreed in accordance with paragraph (g)(2) of this section in the event the household's economic circumstances change.

(viii) The demand letter shall provide space for the household to indicate its preferred method of repayment and for the signature of a household member.

(4) *Action against households which fail to respond.* * * *

(iii) The State agency shall pursue other means of collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of any intentional program violation claim unless the State agency can determine that such other means are generally not cost effective.

* * * * *

(g) *Method of collecting payments.* * * *

(3) *Intercept of unemployment compensation benefits.* State agencies which have an approved attachment to their Plan of Operation permitting the intercept of unemployment compensation benefits for the collection of claims for intentional program violations may arrange for such intercept as provided in § 272.12. Collections made by such intercepts shall be treated as lump sum or installment payments as discussed in paragraph (g) (1) and (2) of this section.

* * * * *

(k) *Accounting procedures.* * * *

(5) Identify at certification household that owe outstanding payments on a previously issued claim determination. At the time the household is certified and receives an initial allotment (as specified at § 273.17(d)(4)), the initial allotment, whether paid retroactively or prospectively, shall not be reduced to offset claims.

* * * * *

PART 275—PERFORMANCE REPORTING SYSTEM

9. In § 275.15, a new paragraph (g) is added to read as follows:

§ 275. Data management.

* * * * *

(g) *Identification of High Error Project Areas/Counties/Local Offices.* FNS may

use quality control information to determine which project areas/ counties/local offices have reported payment error rates that are either significantly greater than the State agency average or greater than the national error standard of the Program. When FNS notifies a State agency that a "high error" area exists, the State agency shall ensure that corrective action is developed and reported in accordance with the provisions of § 275.17. If FNS identifies a "high error" locality which a State agency has previously identified as error-prone and taken appropriate action, no further State agency shall be required. If a State agency's corrective action plan fails to address problems in FNS-identified "high error" areas, FNS may require a State agency to implement new or modified cost-effective procedures for the certification of households.

Dated: January 12, 1990.

George A. Braley,

Acting Administrator.

[FR Doc. 90-3993 Filed 2-21-90; 8:45 am]

BILLING CODE 3410-30-M

Farmers Home Administration

7 CFR Parts 1930, and 1944

Section 515 Rural Rental Housing Loan Policies, Procedures, and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations for section 515 Rural Rental Housing Loan and Section 514/516 Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations as an emergency action. This action is necessary to comply with the Fair Housing Amendments Act of 1988, which was effective as of March 12, 1989. This action is merely reflecting legislative requirements of the Fair Housing Act which was promulgated by the Department of Housing and Urban Development in a Final rule on January 23, 1989. The intended effect of this action is to expand access to all disabled persons and to families with children in all FmHA financed multifamily housing covered dwellings. The USDA (FmHA) has no discretion regarding the adoption of the final rule published by the Department of Housing and Urban Development nor the effective date of the requirements of the Act.

EFFECTIVE DATE: February 22, 1990.

FOR FURTHER INFORMATION CONTACT: Rebacca Johnson, Senior Loan Officer, Multi-Family Housing Processing Division, USDA, Farmers Home Administration, Room 5337, South Agriculture Building, Washington, DC 20250, telephone 202-382-1604.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Background

The Fair Housing Amendments Act of 1988 (Pub. Law 100-430, approved September 13, 1988) was enacted to strengthen the administrative enforcement provisions of title VIII, to add prohibitions against discrimination in housing on the basis of handicap and familial status, and to provide for the award of monetary damages where discriminatory housing practices are found. The amended law, referred to as the Fair Housing Act, became effective on March 12, 1989.

The provisions in the Fair Housing Act describing the nature of conduct which constitutes a discriminatory housing practice has been revised to extend the protections of the Fair Housing Act to persons with handicaps and families with children. In this respect, sections 804, 805, and 806 of the Fair Housing Act prohibit discrimination in any activities relating to the sale or rental of dwellings, in the availability of residential real estate-related transactions, or in the provision of services and facilities in connection therewith because of race, color, religion, sex, handicap, familial status, or National origin. The Fair Housing Act also specifically makes it unlawful to refuse to permit, at the expense of the handicapped person, reasonable modifications to existing premises occupied or to be occupied by such a person if such modifications are necessary to afford such person full enjoyment of the premises (section 804(f) (3) (A)). With respect to rental housing, the Fair Housing Act provides that a landlord may, where reasonable, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The Act also makes it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services to afford a handicapped person equal opportuntiy to use and enjoy a dwelling. Further, the Fair Housing Act makes it unlawful to design and construct certain multifamily dwellings for first occupancy after March 13, 1991, in a manner that makes them inaccessible to handicapped persons. All premises within such dwellings also are specifically required to contain several features of adaptive design so that the dwelling is readily accessible to and usable by persons with handicaps. With respect to the new protection for families with children, the Fair Housing Act prohibits discrimination because of familial status (generally, the presence of children under 18 years of age in a family) in the sale or rental of housing. However, the Act provides an exemption for this prohibition for housing which qualifies as "housing for older persons".

Section 805 of the Fair Housing Act, as revised, prohibits discrimination related to "residential real estate-related transactions" rather than merely referring to "financing". In addition, the definition of the term residential real estate-related transaction specifically indicates that the Fair Housing Act applies to the selling, brokering and appraising of dwellings, as well as to the making and purchasing of loans and other financial assistance for dwellings. The Act, however, does not prohibit a person engaged in the business of furnishing appraisals from taking into consideration factors *other* than familial status. USDA, FmHA's Equal Opportunity Staff is revising existing Fair Housing regulations issued under Title VIII to reflect the expanded coverage of title VIII.

Regulatory Flexibility Act

Neal Sox Johnson, Acting Administrator, Farmers Home Administration, has determined that this action will not have a significant impact on a substantial number of small entities because the revisions provide clarification of existing regulations and the annual volume of the program is expected to continue to decline. FmHA anticipates funding approximately 850 applications nationwide.